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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~623~~ 39

RUSSIAN VOLUNTEER FLEET, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 3, 1930

CERTIORARI GRANTED APRIL 21, 1930

(34,754)

(34,754)

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 623

RUSSIAN VOLUNTEER FLEET, Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

May it please the Court:

The petition of the Russian Volunteer Fleet respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

This suit was brought in the Court of Claims by the Petitioner, a corporation organized and existing under the laws of Russia, against the United States to recover the value of two contracts for ships requisitioned by the President on August 16, 1917. These contracts, of which Petitioner was then owner, were requisitioned under the provisions of Public Act No. 23 of the 65th Congress, House Resolutions No. 2971 entitled "An act making appropriations to supply urgent deficiencies in appropriations of the military and naval establishments etc." approved on June 15, 1917, (40 Stat at L. 182) and this suit was filed by your Petitioner pursuant to the express authority contained in that Act. The Court of Claims dismissed the suit for want of jurisdiction before any testimony was taken, notwithstanding the express provision in the Act of Congress that any corporation whose property should be appropriated under the terms of the Act, should be [fol 2] entitled to sue the United States in the Court of Claims to recover just compensation therefor. The decision was based solely on the ground that the Petitioner is a citi-

zen of the State of Russia, with the present Government of which the Government of the United States has not established diplomatic relations. The ultimate question involved in this case may accordingly be stated thus:

May the Government of the United States take the private property of a Russian citizen, refuse to pay for it, and successfully resist suit in the Court of Claims on the ground that the Soviet Government is not "recognized" by the Department of State.

The facts of record are as follows:

Petitioner has been since 1917 and is now a corporation organized under the laws of Russia (R., p. 1).* On August 16, 1917, the United States Shipping Board Emergency Fleet Corporation requisitioned from the Petitioner contracts for the building of two vessels then under construction at the yards of the Standard Shipbuilding Company in New York of which contracts the Petitioner was then owner (R. pp. 4-10). The vessels were taken by virtue of the powers conferred upon the President by the Urgent Deficiencies Appropriation Act of June 15, 1917 (hereinbefore cited), and by him delegated to the Fleet Corporation by executive order dated July 11, 1917 (R., pp. 4-5). That Act contained the following provision (R., pp. 2-4):

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in [fol. 3] which ships or materials are built or produced to place at the disposal of the United States the whole of any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

[*References to side folios of Record.]

(e) To produce, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship. * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: Provided, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

[fol. 4] Although the Fleet Corporation at the time of requisition, recognized the right of your Petitioner to compensation (R., p. 7) and has since valued that right at the sum of $1,412,532.35 as of March 5, 1920, (R. pp. 10-11), it has refused to make any payment whatsoever to the Petitioner.

The original petition in this case was filed with the Court of Claims on the 23rd day of March, 1921. (R. p. 1). By leave of court an amended petition was filed on the 16th day of October, 1924, which contains a full statement of the Petitioner's claim (R., pp. 1-39). Thereafter the Petitioner moved for the issuance of commissions to take testimony on interrogatories for the purpose of proving the allegation of the amended petition that a citizen of the United States has the right to sue the Government of Russia in the courts of that State upon a claim such as the present (R., p. 39). Upon objection made by the United States, this motion was overruled (R., p. 39). Thereupon the Petitioner served notice upon the United States of its intention to take depositions (R., pp. 39 etc.). To this the United States replied by a motion to quash the notice on the ground that the Court of Claims was without jurisdiction to entertain this suit (R., p. 40). This motion was argued and thereafter the judgment of the Court was entered dismissing the entire proceedings for want of jurisdiction (R., p. 44). Thereafter Petitioner filed a motion for new trial which was overruled (R., p. 40).

The Court filed an opinion in support of its order, in which the dismissal of the suit was based on the following propositions (R., pp. 41, etc.):

(1) That the right of the Petitioner to bring this suit is limited by Section 155 of the Judicial Code (U.S.C. Title 28, Sec. 261), which provides as follows:

[fol. 5] "Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

(2) That the Courts of the United States cannot admit proof of the existence of any foreign Government which the Government of the United States has not "recognized" (i.e., with which the Department of State has not established diplomatic relations).

(3) That in any event the privilege of suing the United States under Sec. 155 is reserved to citizens of states, the

existing Governments of which, are "recognized" by the Department of State.

While the United States advanced certain other contentions in argument below, the Court of Claims did not refer to them in its opinion. It will thus be seen that the ruling below, unless reversed by this Court, establishes the general proposition that a citizen of a foreign state which accords a citizen of the United States the right to sue that state or government in its courts, may not sue the United States for private property taken by the United States unless diplomatic relations have been established between that country and the United States, notwithstanding the express provision of an Act of Congress, properly construed, authorizes such a suit.

B

Reasons Relied on for the Allowance of the Writ

1. Because the decision of the Court of Claims, if not reversed, establishes the power of the United States to take the property of the Petitioner without paying for it, [fol. 6] as the Petitioner is held to be without remedy in the Courts of the United States, and *ex hypothesi* is without remedy through diplomatic channels.

2. Because the decision of the Court of Claims, if not reversed, deprives the citizens of any state, the existing government of which has not established diplomatic relations with the United States, of all remedy against acts of spoliation by the United States.

3. Because this case involves a question as to the application of the provisions of Section 155 of the Judicial Code (limiting the right of aliens to sue the United States in the Court of Claims) to suits under the provisions of the Urgent Deficiencies Appropriation Act of June 15, 1917. This act expressly authorized suit to be filed by any person against the United States in the Court of Claims to recover just compensation for property taken under that act.

4. Because this case involves a further question of statutory construction as to the extent of the right of aliens to sue the United States in the Court of Claims under the

provisions of Section 155 of the Judicial Code, which is of great practical importance and which has not heretofore been passed upon by this Court.

5. Because this case involves novel and important questions as to the construction of two acts of Congress which have not heretofore been passed upon by this Court.

6. Because the decision of the Court of Claims has read into the provisions of Section 155 of the Judicial Code a limitation not contained in the statute.

7. Because the decision of the Court of Claims in effect deprives of all remedy the citizens of friendly foreign governments whose property is appropriated by the United States in time of war, in contravention of the accepted principles of the law of nations.

[fols. 7 & 8] 8. Because the effect of the decision of the Court of Claims may be to deprive citizens of the United States of reciprocal remedies now available to them in the courts of governments not recognized by the Government of the United States, such as, for example, now exist in the courts of Russia.

9. Because this case involves several points of general municipal law, and of public international law, which were decided by the Court below in a manner in conflict with the weight of authority, with the decisions of other Federal Courts, and with the great weight of scholarly opinion.

Wherefore your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that Court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on this docket No. —. The Russian Volunteer Fleet, Appellant, against The United States, Appellee, and that the said judgment of the Court of Claims of the United States may be reversed by this Honorable Court, and that your Petitioner may have such other and

further relief in the premises, as this Honorable Court may seem meet and just.

And your Petitioner will ever pray.

Russian Volunteer Fleet, by Charles Recht, Horace S. Whitman, Wm. L. Marbury, Jr., Counsel for Petitioner.

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. A-69

RUSSIAN VOLUNTEER FLEET

v.

THE UNITES STATES

I. HISTORY OF PROCEEDINGS

On March 23, 1921, the original petition in this case was filed by Victor E. Gartz, Esq., attorney of record.

On April 9, 1923, on motion made therefor, Charles Recht, Esq., was substituted as attorney of record.

On October 16, 1924, on motion made therefor, the plaintiff filed an amended petition.

Said amended petition is as follows:

II. AMENDED PETITION—Filed Oct. 16, 1924

To the Honorable the Judges of the Court of Claims:

The petition of the Russian Volunteer Fleet Corporation respectfully shows:

1. Your petitioner, Russian Volunteer Fleet, claimant herein, is a corporation duly organized under, and by virtue of, the Laws of Russia.

2. On or about the 13th day of January, 1917, your petitioner became the assignee for value of a certain contract for the construction of one Standard steel cargo steamship of approximately 7300 tons deadweight, which contract was

entered into on the 21st day of July, 1916, between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the Laws of the State of New York, and one Christian Haaland of Haugesund, Norway. Copy of said contract, the assignment thereof and two letters, dated respectively the 27th and 28th days of July, 1916, and supplemental thereto, are attached hereto, [fol. 2] are made a part hereof and are marked Exhibit "A."

3. On or about the 16th day of January, 1917, your petitioner became the assignee for value of a certain contract for the construction of one Standard steel cargo steamship of approximately 7300 tons deadweight, designated therein as Hull No. 7, which contract was entered into on the 27th day of October, 1916, between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the Laws of the State of New York and one B. Stolt Nielsen of Haugesund, Norway, and was assigned by said B. Stolt Neilson to Birger Pedersen and Son, also of Haugesund, Norway, who, in turn assigned their right, title and interest in and to said contract on the date hereinabove mentioned to your petitioner. Copy of said contract and the assignments thereof are attached hereto, made part hereof and are marked Exhibit "B."

4. Public Act No. 23 of the 65th Congress, House Resolution No. 2971, entitled "An Act Making appropriation to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes" approved on the 15th day of June, 1917, provided that:

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at [fol. 3] the disposal of the United States the whole of any part of the output of such plant, to deliver such output or

part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship. * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

[fol. 4] The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: Provided, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

5. Under authority of, and pursuant to the provisions of said act of the 15th day of June, 1917, referred to in Paragraph marked "4" in this petition, the President of the United States, on the 11th day of July, 1917, issued the following executive order:

"By virtue of authority vested in me in the section entitled 'Emergency Shipping Fund' of an Act of Congress entitled, 'An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, approved June 15th, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power [fol. 5] and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessel in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board, may in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

The White House, 11th of July, 1917."

6. The United States Shipping Board Emergency Fleet Corporation on the 16th day of August, 1917, under the provisions of said Act, approved the 15th day of June, 1917, and by authority of said Executive Order of the President, dated the 11th day of July, 1917, issued to your petitioner the following requisition order, with enclosure [fol. 6] marked "A" attached thereto:

"Aug. 16, 1917.

Russian Volunteer Fleet Association, 44 Whitehall St., New York City.

DEAR SIRS: On August 3, 1917, the United States Emergency Fleet Corporation issued to the Standard Shipbuilding Company the notice or requisition, set forth in enclosure marked (A).

In response to this communication the Standard Shipbuilding Corporation, the shipbuilders, informed us that you, as owners, or representatives of owners, had entered into a contract with them for the vessels listed below:

Hull No.	Type	D. W., ton-	Date of contract
6	Cargo Steamship	7,300	7-21-16
7	" "	7,300	10-27-16

The Corporation's District Officer having charge of vessels in the District in which the Shipbuilders are located has been instructed to take charge, for the Corporation, of the completion of vessels now under construction and has been authorized temporarily to take over your local inspecting officers at their present compensation. Will you please inform the District Officer, Mr. Eads Johnson, at 115 Broadway, New York City, the names of your representatives and their compensation, sending a duplicate to this office. Your co-operation with the Corporation is invited.

[fol. 7] The Corporation will consider payments to the Contractor accruing since the date of requisition, upon the receipt of proper vouchers and adequate information to be forwarded through its District Officers.

You are requested, as soon as possible, to report to the Corporation a statement in detail of the payments already made by you on each ship named above prior to the date

of the requisitioning, August 3, 1917. This statement should be accompanied by the original vouchers and receipts and should be verified under oath by the proper corporate officer of your company.

It is the present intention of the Corporation to reimburse you promptly so far as funds are available, for the payments heretofore made to the shipbuilders if after investigation of data submitted by you, such payments are found in order and in conformity with the contract requirements.

At your further and early convenience, you are requested to submit to the Corporation a statement of such indirect expenditures as you have made on account of each vessel, for instance, the cost of superintendence, original design, interest on funds already paid, and the like. The matters mentioned will require careful audit, and in addition you may submit any other matters you deem pertinent.

It will be perceived that the Corporation presumes it is addressing this letter to the Owners, or responsible representatives of the Owners, or persons entitled to receive compensation on account of the requisition of the vessels listed above. The Corporation requests that there be included in your response to this letter all evidence of ownership which is necessary to establish the right of those who are entitled [fol. 8] to receive the compensation provided by law.

The consummation of the orders herein, and heretofore transmitted, will be made the subject of later appropriate corporate action.

Very truly yours, W. L. Capps, General Manager."

Enclosure (1).

"Enclosure 'A'

To Russian Volunteer Fleet Association:

Re Standard Shipbuilding Corporation

By virtue of an act of Congress, approved June 15, 1917, entitled 'An Act Making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes' and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and

passenger ships, above 2500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit and commitments for materials, machinery, equipment and outfit necessary for their completion are hereby requisitioned by the United States.

On behalf of the United States, by virtue of said Act and said Order, you are hereby required to complete the con- [fol. 9] struction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

The compensation to be paid will be determined hereafter and will include ships, material and contracts requisitioned.

You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this Corporation.

(Signed) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corporation.

Washington, D. C., August 3, 1917."

7. Acting pursuant to said Act of Congress, and by authority of said Executive Order, said United States Shipping Board Emergency Fleet Corporation, for use of the United States, did on the 3rd day of August, 1917, by virtue of said order, requisition and take over the contracts belonging to your petitioner as aforesaid for the costruction of two ships, and/or said ships belonging to your petitioner, [fol. 10] then being constructed in the shipyard of said Standard Shipbuilding Corporation, and the United States Government thereby became liable to your petitioner for its just and adequate compensation for the requisitioning and taking of said contracts for the construction of said ships and/or said ships.

8. Your petitioner subsequent thereto, and on or about the 26th day of August, 1919, submitted to the United States Shipping Board Emergency Fleet Corporation, the petitioner's affidavit of claim and vouchers in support thereof, in which your petitioner makes claim for just compensation due and owing it in the sum of Three Million Eight Hundred Fifty-one Thousand Eight Hundred Fourteen and 41/100 ($3,851,814.41) Dollars plus interest from the dates when the payments therein set forth were made to the time when payment is to be made to your petitioner by the United States Government.

9. Subsequent to the submission of the affidavit of claim referred to in the previous paragraph, the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation, on March 5th, 1920, passed the following resolution:

"Resolved, That just compensation to the Russian Volunteer Fleet on account of the requisitioning of Hulls Nos. 6 and 7 under construction by the Standard Shipbuilding Corporation, in accordance with Requisition Order dated August 3, 1917, be and it is hereby fixed at $530,144.10, in addition to the sum of $882,388.25 representing certain progress payments made to the shipbuilder which is to be a refund to said Russian Volunteer Fleet, making a total of $1,412,532.35; and be it

[fol. 11] Further resolved, That payment of said just compensation and refund of progress payments to the Russian Volunteer Fleet be withheld pending advice from the Department of State as to how and to whom said money shall be paid and be it

Further resolved, That the General Comptroller be and he hereby is authorized to approve for payment, and the Treasurer to pay, the said amount of $1,412,532.35 to whomsoever the Department of State shall designate as properly and legally entitled thereto.

A true copy. John Flaherty, Secretary."

10. The value of the contracts for the construction of ships and/or the ships taken from the petitioner as hereinbefore set forth was $4,000,000.00.

11. Your petitioner further avers that it is justly entitled to the amount last above set forth after allowing all just credits and off-sets and that no payments or partial payment has been made to the plaintiff for its property taken as hereinbefore set forth.

12. That no assignment or transfer of your petitioner's claim or any part thereof or interest therein has been made and that your petitioner at all times has been a citizen of Russia and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States.

13. Citizens of the United States are and at the time of and since the commencement of this suit have been accorded the right to prosecute claims against the Russian Government in the Court of that Government.

[fol. 12] Wherefore your petitioner prays judgment for Four Million Dollars ($4,000,000.00), with interest from the third day of August, 1917, as just compensation for the contracts, and for ships taken from your petitioner, as hereinbefore set forth.

The Russian Volunteer Fleet, by Isaiah J. Hoorgin, Agent. Charles Recht, Attorney of Record. Horace S. Whitman, H. Rozier Dulany, Alexander H. McCormick, Of Counsel.

[fol. 13] *Duly sworn to by Isaiah J. Hoorgin. Jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO AMENDED PETITION

Standard Shipbuilding Corporation. Ship Builders—Drydocking—Ship Repairs, 44 Whitehall Street, New York
Telephone Broad 3935-6
Shipyard: Richmond Boro, N. Y.; Tel.: 610 West Brighton; Cable Address: "Downeyard", New York
New York

Our contracts and deliveries are subject to delays from accidents, strikes, fires, Government requisitions, war and other causes beyond our reasonable control.

This is to certify that these are correct plans and specifications for the construction of one (1) "Standard Cargo

Steamship," contracted to be built by the Standard Shipbuilding Corporation, of New York, N. Y., U. S. A., for Christian Haaland, of Haugesund, Norway, under date of July 21st, 1916.

Charles C. Bowers, Assistant Manager, Standard Shipbuilding Corporation.

Signed before me this 27th day of July, 1916. Antonio Polito, Notary Public, Kings Co., #110. Cert. filed in N. Y. Co. #193.

[fol. 15] Standard Shipbuilding Corporation, 44 Whitehall Street, New York, N. Y., U. S. A., in Contract with Christian Haaland, of Haugesund, Norway.

This Contract made the 21st day July, 1916, by and between the Standard Shipbuilding Corporation, of New York, N. Y., U. S. A., a corporation organized under the laws of the State of New York, (hereinafter called the Builders), party of the first part; and Christian Haaland, of Haugesund, Norway, (hereinafter called the Purchaser), party of the second part;

Witnesseth: That the said parties mutually agree as follows:

The Builders, for and in consideration of the payments of money to be made by the Purchaser to the Builders, as hereinafter specified, hereby agree to build, sell and deliver, and the Purchaser hereby agrees to buy, pay for and accept, one (1) Standard Cargo Steamship of the following general description, and in detail as per specifications hereto attached, signed by parties hereto, and forming a part of the contract. Workmanship of said vessel to be first-class in every respect and materials to be of a kind and quality named in said specifications.

General Description: The vessel herein agreed upon shall be a single screw, 'tween deck, steel cargo steamship of approximately seventy-three hundred (7300) tons deadweight capacity in Lloyd's summer freeboard rules. This ship shall be designed, built, and equipped to comply with [fol. 16] the requirements of British Lloyd's Register for ocean going cargo steamships to class 100-A1, and to com-

ply with the requirements of the Norwegian Board of Sea Control laws in force at the date of this contract.

General Dimensions, approximately: Length over all, 392 feet 6 inches. Lloyd's length, 377 feet. Breadths moulded 52 feet. Depth at side to upper deck 29 feet. Rise of floor 6 inches. Loaded draft, mean, British Lloyd's summer freeboard 23 feet 8 inches. Cargo capacity about seventy-three hundred (7300) tons deadweight, including cargo, coal, stores, water, crew and effects. Speed, ten and one-half (10½) knots loaded. Purchaser to provide load necessary for trial trips.

General Conditions: It is the intent of the parties hereto, and the purpose of this contract, to provide for the construction and equipment of a Standard Cargo Steamship in accordance with the details set forth herein, ready for service, the Purchaser to furnish fuel, stores, and perishable supplies. Builders agree to promptly repair or replace if necessary any defective materials, or workmanship due to the fault of the Builders and found defective, in the hull or machinery within three months after delivery of the vessel by the Builders. If said repair or replacement is not done at the Builders' shipyard in New York, then the Builders shall pay only an amount equal to the cost which would accrue to the Builders for doing such work at the Builders' shipyard. At the expiration of three months after delivery of the vessel by the Builders, the Builders' liability or responsibility for any parts of the vessel shall terminate. The Builders may elect to appoint the chief engineer to serve during the time of the Builders' responsibility for parts, but the Purchaser shall pay any engineer so provided only the prevailing wages, and any extra wages paid the said engineer shall be paid by the Builders. If dur- [fol.17] ing the progress of the work any changes in the plans and specifications are desired by the Purchaser and if such changes do not involve any additional charge or time, they shall be made by the Builders upon receiving the Purchaser or the Purchaser's representative designated in writing to the Builders, a written request for the same. If such changes do involve any additional charge or time, then before the work shall be started on the alterations in question the Builders shall furnish to the Purchaser in writing

a quotation giving the additional charge and time required and the Purchaser shall promptly accept said quotation in writing, on failure of which acceptance, such request for alterations shall be disregarded. It is further expressly stipulated and agreed that no extra payment or deduction in the contract price shall be or become due or payable except as above provided. It is mutually understood that such request for alterations and alterations made pursuant thereto shall not in any way invalidate this contract.

Until the completion and tender of delivery of said vessel to the Purchaser as above provided, said vessel shall be at the risk of the Builders.

The builders hereby agree to insure the vessel against all damage by fire, launching or other accidents, possible to cover by insurance, during the entire time of construction and until delivery. Rights in said insurance shall accrue to the Purchaser pro rata as the Purchaser makes payments as provided for in this contract. Said insurance shall run to the Builders and the Purchaser as their respective interests may appear. If the Builders can or do complete and deliver the vessel to the Purchaser, or his agents, before the 31st day of May, 1917, financial gain will accrue to the Purchaser; therefore it is agreed that the Builders shall receive from the Purchaser Five Hun-
[fol. 18] dred Dollars ($500.00) per day for each and every day of pre-delivery. In event that the Builders fail to complete or deliver the vessel on or before the 31st day of May, 1917, financial loss will accrue to the Purchaser; therefore it is agreed that the Builders shall make good to the purchaser financial loss resulting from delay in delivery for any cause not excepted herein, at the rate of Five Hundred Dollars (500.00) for each day after May 31st, 1917, or such later date as may be fixed by agreed extensions of time under the terms of this contract, which it is mutually agreed shall constitute liquidated damages. The time of completion or delivery of the vessel, or vessels, specified in this contract is subject to delays by acts of God, fires, floods, war, Government requisition or commandeering, strikes or lockouts of workmen, provided such lockouts are reasonably justified, when and wherever the vessel, or vessels, herein specified, or any parts thereof, are under contract or in process of construction, and by delay in payment by the Purchaser, or his agents, of any money

or payments due the Builders under the terms of this contract, or by alterations or additions by, or at the request of the Purchaser or his agents, or delay in receipt of materials not caused by the Builders, it being understood that due care will be exercised by the Builders in obtaining such materials and proper and reasonable precautions taken by the Builders to procure the same, or by any other cause whatsoever not within the absolute control of the Builders. If the Builders are prevented or delayed in commencement or performance of any part of this contract by any of the causes specified, then the Purchaser, or his agent or assigns, shall grant the Builders one day additional time for the performance of this contract for each and every day lost time or delay resulting from any of the causes specified or implied hereinbefore.

[fol.19] Purchase Price, Payments and Guarantees: The Purchaser hereby agrees to pay to the Builders and the Builders hereby agree to accept, the price of One Hundred and Nineteen Dollars and Eighty-six Cents ($119.86), for each ton of deadweight capacity of the vessel, as she is finally and officially measured. The estimated dead-weight tonnage of the vessel is about seventy-three hundred (7300) tons; therefore, for the purpose of this contract, until the vessel is officially measured, the gross price is based upon seventy-three hundred (7300) tons D. W. at One Hundred and Nineteen Dollars and Eighty-six Cents ($119.86) per D. W. ton, making estimated price of the vessel Eight Hundred and Seventy-five Thousand Dollars ($875,000.00). The Purchaser agrees to pay said estimated price to the Builders in lawful money of the United States of America, in payments as follows:

1st	payment	on signing contract	$87,500.00
2nd	"	" " "	131,250.00
3rd	"	August 20th, 1916	65,625.00
4th	"	Sept. 20th, 1916	65,625.00
5th	"	October 20th, 1916	65,625.00
6th	"	November 20th, 1916	65,625.00
7th	"	December 20th, 1916	65,625.00
8th	"	January 20, 1917	65,625.00
9th	"	February 20th, 1917	65,625.00
10th	"	March 20th, 1917	65,625.00
11th	"	April 20th, 1917	65,625.00

Twelfth payment when the vessel is ready for delivery, in accordance with the terms of this contract, the final payment shall be made and shall include payment in full for the remainder of the principal sum of this contract and any and all amounts due the Builders for any extras or other charges over and above the price of the vessel as hereinbe- [fol. 20] fore fixed, and also for any dead weight tonnage capacity over 7300 tons shown by official measurement, and also for any bonus earned by the Builders by pre-delivery. If official measurement should be short of 7300 D. W. tons, One Hundred and Nineteen Dollars and Eighty-six Cents ($19.86) shall be deducted from final payment for each D. W. ton short. If the Builders are indebted to the Purchaser for delay in delivery, for cause other than herein specified, said indebtedness shall be deducted from the final payment.

The Builders shall place in escrow with a bank or trust company satisfactory to Builders the first two payments of Two Hundred Eighteen Thousand Seven Hundred Fifty ($218,750) Dollars each herein mentioned when paid, to be held by the said bank or trust company as security to said Purchaser for the faithful performance of this contract by the Builders and to be paid to said Builders upon acceptance of said vessel by the purchaser on complete performance of this contract by the Builders. In case of default of Purchaser to make any of the payments herein provided, a continuance of such default for thirty (30) days after the due date herein specified, the said bank or trust company shall, at the expiration of thirty (30) days from the beginning of said default, pay over to the Builders said money so held in escrow, provided, however that said Builders at any time may substitute for said escrow a bond in favor of the Purchaser with a satisfactory surety company as surety in the sum of Two Hundred Eighteen Thousand Seven Hundred Fifty ($218,750) Dollars conditioned for the faithful performance of this contract by the Builders, whereupon said escrow money shall be paid to the said Builders.

W. D.
T. K. H.

[fol. 21] The Builders hereby agree to indemnify and save harmless the Purchaser from any suits, judgments,

damages or claims whatsoever for infringements of any patents or patent rights by the Builders, the Builders agreeing, in the event of suit being brought against the Purchaser, upon notice being given to the Builders, that they will have their lawyers defend said suit or suits without cost to the Purchaser.

Inspection and Delivery: During all working hours while the vessel is in course of construction, the Purchaser's representative, A. O. Andersen & Company, or another representative satisfactory to the Builders if appointed in their stead, shall have free access to the shipyard and shops of the Builders to inspect the vessel or her parts. Classification Inspectors shall have like access. Upon receipt of all payments due the Builders, when the vessel is ready for delivery, the Builders shall deliver said vessel to the Purchaser, or his agents, at New York, free and clear of all encumbrances with all usual official documents, including Lloyd's classification. Should any question or disagreement arise between the parties hereto, relating to any part of the contract, and parties hereto fail to agree thereon, such question or disagreement shall be adjusted and settled by arbitration; one arbitrator to be appointed by the Purchaser and one by the Builders. These two arbitrators to appoint a third, and a majority decision of said Board shall be binding upon both parties hereto and finally settle any disagreements which may arise. Cost of arbitration to be borne equally by parties hereto.

In case the Builders do not proceed with reasonable dispatch in the building of the vessel according to the meaning hereof, the Purchaser may enter into the Building Yard of the Builders and employ any number of workmen and [fol. 22] use and employ the necessary machinery, engines and tools of the Builders, and proceed with the finishing of the vessel, and for that purpose use, purchase, and provide any other materials to be properly employed thereon, and pay for such materials, and pay the wages of the workmen out of the balance remaining unpaid of the said purchase money, and in case the same shall be insufficient for the purpose, then the Builders shall, on demand, pay and make good the deficiency, but the Builders shall always have the right to furnish any labor and material and to resume the performance of the contract.

It is understood and agreed that the vessel or any parts thereof, herein contracted for, shall at all times be the property of the Purchaser in so far as he has made payments on account of same, and that all materials purchased and delivered to the yards of the Builders for her construction shall become the Purchaser's property by such delivery, so far as the Purchaser has paid for same, but the vessel and all parts thereof, shall always be subject to a lien by the Builders for any unpaid instalment of the purchase price and for work done and labor and materials furnished in excess of the amount of payments then made.

It is further covenanted and agreed that time and the exact and punctual performance of each and every term and condition in this agreement provided is of the essence of this agreement; and it is further covenanted and agreed that should the Purchaser make default in the payment of any of the instalments of said purchase price, after the same or any thereof become due and payable hereinunder for a space of twenty (20) days, the Builders upon ten (10) days' written notice to the Purchaser's agent in New York, A. O. Andersen & Company, of intention so to do, shall be [fol. 23] at liberty to sell the vessel at the highest price and on the best terms obtainable, whether at auction or by private contract, and should the vessel be sold at a price in excess of Eight Hundred and Seventy-five Thousand Dollars ($875,000.00), then said excess is to be paid to the Purchaser as well as all instalments paid by him on the purchase price, less any expense reasonably incurred by the Builders in making such sale. Should the vessel be sold for less than Eight Hundred and Seventy-five Thousand Dollars ($875,000.00), plus any other or additional expenses which the Builders may reasonably incur thereby, then the difference shall be paid by the Purchaser to the Builders, and shall be withheld out of the instalments theretofore paid by the Purchaser to the Builders, which instalments, with this exception, shall be returned to the Purchaser. If the instalments paid by the Purchaser at the time of such sale shall be insufficient to cover the deficit above referred to, then such deficit shall immediately be made good by the Purchaser.

The right in this paragraph given shall be considered cumulative and shall not in any way limit or restrict any

other rights or remedies existing in favor of the Builders, or which may accrue to the Builders upon any default by the Purchaser.

This contract shall bind the Purchaser and his successors or assigns, and the Builders and their successors or assigns.

In witness whereof, the Standard Shipbuilding Corporation of New York has caused these presents to be executed in duplicate by its First Vice-President and its corporate seal to be hereto affixed, and Christian Haaland, of [fol. 24] Haugesund, Norway, has caused these presents to be executed by his duly authorized agents the day and year first above written.

Standard Shipbuilding Corporation, by Wallace Downey, First Vice-President. Attest: Henry W. Baird, secretary. Christian Haaland, for and by Cable Authority of Christian Haaland. A. O. Andersen & Co., New York Branch; Frank K. Hitching, Asst. Manager, as agents. Witness: V. Reimann.

Transferred to Messrs. The Russian Volunteer Fleet Association, 33 Italjanskaja, Petrograd, terms of payment and conditions as per separate contract dated 13th. January, 1917.

Haugesund, January 13th, 1917.

Christian Haaland.

Witness: Thos. Murer.

[fol. 25] Guaranty Trust Company of New York, 140 Broadway, Capital: $20,000,000. Surplus: $20,000,000.

Cable Address: "Fidelitas"

Fifth Avenue Office: Fifth Avenue and 43rd St.; Cable Address: "Notromco." London Office: 33 Lombard Street, E. C.; Cable Address: "Garritus."

F. J. H. Sutton, Trust Officer. R. J. F. Allen, Assistant Trust Officer

New York, July 28, 1916.

National City Bank, 55 Wall Street, New York, N. Y.

Dear Sirs: We acknowledge receipt from you today of the sum of $218,750 to be held by this company as depositary under letter of instructions dated July 27th, 1916,

signed by Christian Haaland by their Agents A. O. Anderson & Co., and the Standard Shipbuilding Corporation.

Yours very truly, R. J. F. Allen, Assistant Trust Officer.
Christian Haaland. AEB/F.

Witness: Haugesund's Privatbank. Thos. Murer.

[fol. 26] Standard Shipbuilding Corporation, Ship Builders—Drydocking—Ship Repairs, 44 Whitehall Street, New York, Telephone: Broad 3935-6.
Shipyard: Richmond Boro, N. Y.; Tel. 510 West Brighton:
Cable Address: "Downeyard," New York

Our contracts and deliveries are subject to delays from accidents, strikes, fires, government requisitions, war and other causes beyond our reasonable control.

New York, July 27, 1916.

Guaranty Trust Company of New York, 140 Broadway, New York, N. Y.

GENTLEMEN: The undersigned hereby, deposits with you in escrow the sum of Two Hundred, Eighteen Thousand, Seven Hundred and Fifty Dollars ($218,750.00) to be held by you under the following instructions:

1. The sum deposited herewith is to be paid over to the Standard Shipbuilding Corporation, of 44 Whitehall Street, New York City, upon submission to you by the Standard Shipbuilding Corporation of the written acceptance on the part of Christian Haaland, his agents or assigns, of a "Standard Cargo Steamship" to be constructed as described in a certain contract entered into on the 21st day of July, 1916, by and between the Standard Shipbuilding Corporation, of New York City, and Chris-[fol. 27] tian Haaland, of Haugesund, Norway.

2. In case of default of Christian Haaland to make any one of the following payments, then in that event thirty (30) days after the date of default, the said sum deposited shall be paid over to the Standard Shipbuilding Corporation:

3rd	payment	August 20, 1916	$65,625.00
4th	"	September 20, 1916	65,625.00
5th	"	October 20, 1916	65,625.00
6th	"	November 20, 1916	65,625.00

7th	"	December 20, 1916	65,625.00
8th	"	January 20, 1917	65,625.00
9th	"	February 20, 1917	65,625.00
10th	"	March 20, 1917	65,625.00
11th	"	April 20, 1917	65,625.00

A written statement under oath on the part of the Standard Shipbuilding Corporation that Christian Haaland is in default shall constitute sufficient evidence to the Guaranty Trust Company of New York for the latter to pay the fund deposited herewith over to the Standard Shipbuilding Corporation.

3. In the event of default or non-fulfillment of contract by Builders, deposit shall be paid out to Purchaser ten days from the default or declaration of non-fulfillment. Evidence shall be a certification given by the arbitrators nominated as stipulated by the following clause:

"Each party to the contract to choose one arbitrator within three days from the receipt of a written demand for arbitration made by the other party, and the failure on the part of either party to choose an arbitrator within three days of such demand, shall confer the right on the other party to choose not only its own arbitrator, but an arbitrator in place of the one so failed to be appointed by the [fol. 28] other party; any two arbitrators so chosen in the event of their failure to agree shall choose a third, and the decision of any two so chosen and acting as such arbitrators, shall be final and binding upon the parties to said contract."

4. The said fund deposited shall be paid over to the Standard Shipbuilding Corporation upon the latter substituting for said deposited fund a bond in favor of Christian Haaland, with a surety company as surety, satisfactory to Christian Haaland, or A. O. Andersen & Company as agents, in the sum of Two Hundred, Eighteen Thousand, Seven Hundred and Fifty Dollars ($218,750.00) conditioned upon the faithful performance of the above mentioned contract by the Standard Shipbuilding Corporation.

The Guaranty Trust Company assumes no responsibility or liability whatever, its only duty being to hold the deposited fund in the above mentioned manner and the under-

signed agrees jointly and severally to hold the Guaranty Trust Company harmless from any loss that they may sustain by virtue of their agreeing to hold said fund.

Christian Haaland, by His Agent by Telegraphic Authority, Frank K. Hitching. Standard Shipbuilding Corporation, by Wallace Dooney, 1st Vice-Pres.-Gen'l Manager. Attest: Hy. W. Baird, Secretary. (Seal.)

[fol. 29] Exhibit "B" to Amended Petition

Standard Shipbuilding Corporation, No. 44 Whitehall St., New York, N. Y., U. S. A., Mr. B. Stolt Nielsen, of Haugesund, Norway.

This contract made the twenty-seventh day of October, 1916, by and between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the laws of the State of New York (hereinafter called the Builders), party of the first part; and Mr. B. Stolt Nielsen, of Haugesund, Norway (hereinafter called the Purchaser), party of the second part;—A. O. Andersen & Company, Inc., of New York, N. Y., U. S. A., acting in his behalf in signing this contract,

Witnesseth: That the said parties mutually agree as follows:

The Builders, for and in consideration of the payments of money to be made by the Purchaser to the Builders, as hereinafter specified, hereby agree to build, sell and deliver and the Purchaser hereby agrees to buy, pay for and accept, one (1) Standard Cargo Steamship, to be known as Builders No. 7, of the following general description, and in detail as per specifications hereto attached, signed by parties hereto, and forming a part of the contract. Workmanship of said vessel to be first-class in every respect and materials to be of a kind and quality named in said specifications.

[fol. 30] General Description: The vessel herein agreed upon shall be a single screw, 'tween deck, steel cargo steamship of approximately seventy-three hundred (7300) tons deadweight capacity on Lloyd's summer freeboard rules.

This ship be designed, built, and equipped to comply with the requirements of British Lloyd's Register for ocean going cargo steamships to class—100—A1, and to comply with the Requirements of Norwegian Board of Sea Control laws in force at the date of this contract.

General Dimensions, approximately: Length over all, 392 feet 6 inches. Lloyd's length, 377 feet. Breadth moulded 52 feet. Depth at side to upper deck 29 feet. Rise of floor 6 inches. Loaded draft, mean, British Lloyd's summer freeboard 23 feet 8 inches. Cargo capacity about seventy-three hundred (7300) tons deadweight, including cargo, coal, stores, water, crew and effects. Speed, ten and one-half (10½) knots loaded. Purchaser to provide load necessary for trial trips.

General Conditions: It is the intent of the parties hereto, and the purpose of this contract, to provide for the construction and equipment of a Standard Cargo Steamship in accordance with the details set forth herein, ready for service, the Purchaser to furnish fuel, stores, and perishable supplies. Builders agree to promptly repair or replace if necessary any defective materials, or workmanship due to the fault of the Builders and found defective, in the hull or machinery within three months after delivery of the vessel by the Builders. If said repair or replacement is not done at the Builders' shipyard in New York, then the Builders shall pay only an amount equal to the cost which would accrue to the Builders for doing such work at the Builders' shipyard. At the expiration of three months after delivery of the vessel by the Builders, the Builders' lia- [fol. 31] bility or responsibility for any part of the vessel shall terminate. The Builders may elect to appoint the Chief Engineer to serve during the time of the Builders' responsibility for parts, but the Purchaser shall pay any engineer so provided only the prevailing wages, and any extra wages paid the said engineer shall be paid by the Builders. If during the progress of the work any changes in the plans and specifications are desired by the Purchaser, and if such changes do not involve any additional charge or time, they shall be made by the Builders upon receiving from the Purchaser or the Purchaser's representative designated in writing to the Builders, a written request for the same. If such changes do involve any additional charge or time, then

before the work shall be started on the alterations in question, the Builders shall furnish to the Purchaser in writing a quotation giving the additional charge and time required, and the Purchaser shall promptly accept said quotation in writing, on failure of which acceptance such request for alterations shall be disregarded. It is further expressly stipulated and agreed that no extra payment or deduction in the contract price shall be or become due or payable except as above provided. It is mutually understood that such request for alterations and alterations made pursuant thereto, shall not in any way invalidate this contract.

Until the completion and tender of delivery of said vessel to the Purchaser as above provided, said vessel shall be at the risk of the Builders.

The Builders hereby agree to insure the vessel against all damage by fire, launching or other accidents, possible to cover by insurance, during the entire time of construction and until delivery. Rights in said insurance shall accrue to the Purchaser pro rata as the Purchaser makes payments as provided for in this contract. Said insurance [fol. 32] shall run to the Builders and the Purchaser as their respective interests may appear. If the Builders can or do complete and deliver the vessel to the Purchaser, or his agents, before the 30th day of June, 1917, financial gain will accrue to the Purchaser, therefore, it is agreed that the Builders shall receive from the Purchaser Five Hundred Dollars ($500.00) per day for each and every day of predelivery. In event that the Builders shall fail to complete or deliver the vessel on or before June 30th, 1917, financial loss will accrue to the Purchaser; therefore it is agreed that the Builders shall make good to the Purchaser financial loss resulting from delay in delivery for any cause not excepted herein, at the rate of Five Hundred Dollars ($500.00) for each day after June 30th, 1917, or such later date as may be fixed by agreed extensions of time under the terms of this contract, which it is mutually agreed shall constitute liquidated damages. The time of completion or delivery of the vessel, or vessels, specified in this contract is subject to delays by acts of God, fires, floods, war, Government requisition or commandeering, strikes or lockouts of workmen, provided such lockouts are reasonably justified, when and wherever the vessel, or vessels, herein spe-

cified, or any parts thereof, are under contract or in proc ess of construction, and by delay in payment by the Purchaser, or his agents, of any money or payments due the Builders under the terms of this contract, or by alterations or additions by, or at the request of, the Purchaser, or his agents, or delay in receipt of materials not caused by the Builders, it being understood that due care will be exercised by the Builders in obtaining such materials and proper and reasonable precautions taken by the Builders to procure the same, or by any other cause whatsoever not within the absolute control of the Builders. If the Builders are prevented or delayed in commencement or performance of any [fol. 33] part of this contract by any of the causes specified, then the Purchaser, or his agent or assigns, shall grant the Builders one day additional time for the performance of this contract for each and every day lost time or delay resulting from any of the causes specified or implied hereinbefore.

Purchase Price, Payments, and Guarantees: The Purchaser hereby agrees to pay to the Builders, and the Builders hereby agree to accept, the price of One Hundred and Forty-Seven Dollars and Fifty Cents (147.50), for each ton of deadweight capacity of the vessel, as she is finally and officially measured. The estimated deadweight tonnage of the vessel is about seventy-three hundred (7300) tons; therefore, for the purpose of this contract, until the vessel is officially measured, the gross price is based upon seventy-three hundred (7300) tons D. W. at One Hundred and Forty-Seven Dollars and Fifty Cents ($147.50), making estimated price of the vessel One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00). The Purchaser agrees to pay said estimated price to the Builders in lawful Gold Coin of the United States of America, as follows:

First Payment,	on signing		$269,187.50
Second	"	December 3, 1916	107,675.00
Third	"	January 3, 1917	107,675.00
Fourth	"	February 3, 1917	107,675.00
Fifth	"	March 3, 1917	107,675.00
Sixth	"	April 3, 1917	107,675.00
Seventh	"	May 3, 1917	107,675.00
Final	"	On delivery of vessel	161,512.50

When the vessel is ready for delivery, in accordance with the terms of this contract, the final payment shall be made and shall include payment in full for the remainder of the principal sum of this contract and any and all amounts due [fol. 34] the Builders for any extras or other charges over and above the price of the vessel as hereinbefore fixed, and also for any deadweight tonnage capacity over 7300 tons shown by official measurement, and also for any bonus earned by the Builders by pre-delivery. If official measurement should be short of 7300 D. W. tons, One Hundred Forty-seven Dollars and Fifty Cents ($147.50) shall be deducted from final payment for each D. W. ton short. If the Builders are indebted to the Purchaser for delay in delivery, for causes other than herein specified, said indebtedness shall be deducted from the final payment.

The Builders shall place in escrow with a bank or trust company satisfactory to Builders, the first payment of Two Hundred Sixty-nine Thousand and One Hundred and Eighty-seven Dollars Fifty Cents ($269,187.50) herein mentioned when paid, to be held by the said bank or trust company as security to said Purchaser for the faithful performance of this contract by the Builders and to be paid to said Builders upon acceptance of said vessel by the Purchaser on complete performance of this contract by Builders. In case of default of Purchaser to make any of the payments herein provided a continuance of such default for thirty (30) days after the due date herein specified, the said bank or trust company shall at the expiration of thirty (30) days from the beginning of said default, pay over to the Builders said money so held in escrow, provided, however, that said Builders at any time may substitute for said escrow a bond in favor of the Purchaser with a satisfactory surety company as surety in the sum of Two hundred Sixty-nine Thousand One Hundred and Eighty-seven Dollars, Fifty Cents ($269,187.50), conditioned for the faithful performance of this contract by the Builders, whereupon said escrow money shall be paid to said Builders.

[fol. 35] The Builders hereby agree to indemnify and save harmless the Purchaser from any suits, judgments, damages or claims whatsoever for infringements of any patents or patent rights by the Builders, the Builders agreeing, in the event of suit being brought against the Purchaser upon

notice being given to the Builders, that they will have their lawyers defend said suit or suits without cost to the Purchaser.

Inspection and Delivery: During all working hours while the vessel is in course of construction, the Purchaser's representative, A. O. Andersen & Company, Inc., or another representative satisfactory to the Builders if appointed in their stead, shall have free access to the shipyard and shops of the Builders to inspect the vessel or her parts. Classification Inspectors shall have like access. Upon receipt of all payments due the Builders, when the vessel is ready for delivery, the Builders shall deliver said vessel to the Purchaser or his agents, at New York, free and clear of all encumbrances with all usual official documents, including Lloyd's classification. Should any question or disagreement arise between the parties hereto, relating to any part of the contract, and parties hereto fail to agree thereon, such question or disagreement shall be adjusted and settled by arbitration; one arbitrator to be appointed by the Purchaser and one by the Builders. These two arbitrators to appoint a third, and a majority decision of said Board shall be binding upon both parties hereto and finally settle any disagreements which may arise. Cost of arbitration to be borne equally by parties hereto.

In case the Builders do not proceed with reasonable dispatch in the building of the vessel according to the meaning hereof, the Purchaser may enter into the Building Yard of the Builders and employ any number of workmen and use [fol. 36] and employ the necessary machinery, engines and tools of the Builders, and proceed with the finishing of the vessel, and for that purpose use, purchase, and provide any other materials to be properly employed thereon and pay for such materials, and pay the wages of the workmen out of the balance remaining unpaid of the said purchase money, and in case the same shall be insufficient for the purpose, then the Builders shall, on demand, pay and make good the deficiency, but the Builders shall always have the right to furnish any labor and material and to resume the performance of the contract.

It is understood and agreed that the vessel or any parts thereof, herein contracted for, shall at all times be the

property of the Purchaser insofar as he has made payments on account of same, and that all materials purchased and delivered to the yards of the Builders for her construction shall become the Purchaser's property by such delivery, so far as the Purchaser has paid for same, but the vessel and all parts thereof, shall always be subject to a lien by the Builders for any unpaid instalment of the purchase price and for work done and labor and materials furnished in excess of the amount of payments then made.

It is further covenanted and agreed that time and the exact and punctual performance of each and every term and condition in this agreement provided is of the essence of this agreement; and it is further covenanted and agreed that should the Purchaser make default in the payment of any of the instalments of said purchase price, after the same or any thereof become due and payable hereinunder for a space of twenty (20) days, the Builders upon ten (10) days' written notice to the Purchaser's agent in New York, A. O. Andersen & Company, of intention so to do, shall be at liberty to sell the vessel at the highest price and on the [fol. 37] best terms obtainable, whether at auction or by private contract, and should the vessel be sold at a price in excess of One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00) then said excess is to be paid to the Purchaser as well as all instalments paid by him on the purchase price, less any expense reasonably incurred by the Builders in making such sale. Should the vessel be sold for less than One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00) plus any other or additional expenses which the Builders may reasonably incur thereby, then the difference shall be paid by the Purchaser to the Builders, and shall be withheld out of the instalments theretofore paid by the Purchaser to the Builders, which instalments, with this exception, shall be returned to the Purchaser. If the instalments paid by the Purchaser at the time of such sale shall be insufficient to cover the deficit above referred to, then such deficit shall immediately be made good by the Purchaser.

The right in this paragraph given shall be considered cumulative and shall not in any way limit or restrict any other rights or remedies existing in favor of the Builders,

or which may accrue to the Builders upon any default by the Purchaser.

This contract shall bind the Purchaser and his successors or assigns, and the Builders and their successors or assigns.

In witness whereof the Standard Shipbuilding Corporation of New York has caused these presents to be executed in duplicate by its President and its corporate seal to be hereunto affixed, and Mr. B. Stolt Nielsen, of Haugesund, Norway, has caused these presents to be executed by his [fol. 38] duly authorized agents the day and year first above written.

Standard Shipbuilding Corporation. J. Marimon, President. Attest: Adrian H. Larkin, Secretary. B. Stolt Nielsen, for & by cable authority of A. O. Andersen & Co., Christiana; Frank K. Hitching, as Agents. V. Reiman.

This contract is hereby transferred to Messrs. Birger Pedersen & Sön, of Haugesund, who are thus taking over all my rights and obligations.

B. Stolt Ni[redacted]

Haugesund 3/1/1917.

Witness to signature: S. Brommeland. Oskar Bakkevig.

This contract is hereby transferred to Russian Volunteer Fleet Association, Italjanskaja, 33 Petrograd.

The sellers transfer and the buyers overtake all with the contract connected rights and obligations.

Kristiania, 16th Januar, 1917.

Birger Pedersen & Son, of Haugesund.

Witness to signature: Thos. Murer.

[fol. 39] III. Notation as to Answer of Defendant

No answer to the amended petition was filed in this case by the defendant, as provided by Rule 14.

IV. History of Further Proceedings

On May 7, 1927, the plaintiff filed motions (2), to issue commissions to take testimony for plaintiff in Berlin, Germany, and Paris, France, and accompanied same by interrogatories to be propounded.

On May 20, 1927, the defendant filed objections to said motion.

On May 21, 1927, the defendant filed cross-interrogatories to plaintiff's interrogatories.

On January 9, 1928, the plaintiff's motions to take testimony by special commission were argued and submitted.

On April 23, 1928, the court overruled said motions.

V. Plaintiff's Notice to Take Testimony—Filed September 22, 1928

September 19, 1928.

Herman J. Galloway, Esq., Assistant Attorney General, Washington, D. C.

My Dear Sir: I beg to advise you that we will take the evidence of Mr. Chazainow, President of the Russian Vol-[fol. 40]unteer Fleet, Mr. Charles Recht and Mr. Zhdanov at Room 608, Wilkins Building, Washington, D. C., on Monday the 24th at 2 P. M., before J. Arthur Lyman, Esquire, Notary Public, in the case of the Russian Volunteer Fleet vs. The United States, No. 69-A in the Court of Claims of the United States.

Yours very truly, Charles Recht, Horace S. Whitman.

VI. Defendant's Motion to Quash Plaintiff's Notice to Take Testimony—Filed Sept. 22, 1928

Comes now the defendant, by its Attorney General, and moves the Court to quash plaintiff's notice of September 19, 1928, of intention to take the testimony of Messrs. Chazainow, Recht and Zhdanov upon the ground that this Court is without jurisdiction of the subject matter of this proceeding, as more specifically shown in Defendant's Ob-

jections file herein on May 20, 1927, which objections the court sustained in its order of April 23, 1928, overruling the plaintiff's motion.

Herman J. Galloway, Assistant Attorney General.
P. M. Cox, Attorney.

VII. Argument and Submission of Defendant's Motion to Quash

On October 4, 1928, the defendant's motion to quash was argued and submitted by Mr. Percy M. Cox, for defendant, and by Messrs. Horace S. Whitman and Charles Recht, for plaintiff.

[fol. 41] VIII. Opinion of the Court by Sinnott, J.—Filed April 1, 1929

Sinnott, Judge, delivered the opinion of the court:

This matter comes before the court on defendant's motion to quash plaintiff's notice of September 19, 1928, to take the testimony of certain witnesses in Washington, D. C., and also to dismiss the petition.

It is stated in plaintiff's brief:

"The plaintiff in this case is a corporation and citizen of the Union of Soviet Socialist Republics. The plaintiff has alleged and now offers to prove that a citizen of the United States is or was accorded the right to prosecute claims against the said Russian Soviet Government in its courts or against the Kerensky government in the courts of that government."

It is contended by defendant that this court is without jurisdiction, upon the ground that it is asked to admit evidence and upon that evidence judicially to determine a political question involving the recognition of the existence of the Union of Soviet Socialist Republics in Russia, and also the recognition of the existence of a judiciary therein, which questions the defendant contends only the executive branch of our Government is empowered to determine.

The right of aliens to sue in this court is provided for in the Judicial Code, as follows:

"Sec. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

Whether there exists a government in Russia, known as the Union of Soviet Socialist Republics, is a question preliminary to the determination of the right of citizens of the United States to prosecute claims against such government in its courts.

It has been repeatedly held that, under our polity of government, the existence or nonexistence of governments is a matter for the determination by the executive and not the judicial department of this Government. This doctrine [fol. 42] is well stated by the Supreme Court in Kennett v. Chambers, 14 How. 30:

"It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent State was a question for that department of our Government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent State, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory. And if we undertook to inquire whether she had not in fact become an independent sovereign State before she was recognized as such by the treaty-making power, we should take upon ourselves the exercise of political authority, for which a judicial tribunal is wholly unfit, and which the Constitution has conferred exclusively upon another department.

"This is not a new question. It came before the court in the case of Rose v. Himley, 4 Cr. 272, and again in Gelston v. Hoyt, 3 Wheat. 324. And in both of these cases the court said that it belongs exclusively to governments to recognize new States in the revolutions which may occur

in the world; and until such recognition, either by our own Government or the government to which the new State belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered."

See also United States v. Palmer, 3 Wheat. 610; The Nueva Anna, 6 Wheat. 193; Jones v. United States, 137 U. S. 202; The Penza, The Tobolsk, 277 Fed. 91; Russian Socialist Federated Soviet Government v. Cibrario et al., 191 N. Y. S. 543; Lehigh Valley R. Co. v. State of Russia, 21 Fed. 2d, 396; Sokoloff v. National City Bank, 199 N. Y. S. 355.

We take the following pertinent excerpts from the above cases:

"All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings." Jones v. United States, supra, p. 214.

"The courts must follow and may not lead the executive. They have no authority to institute an original inquiry into conditions of a foreign state of government. Which is a sovereign, de jure or de facto, of a territory is not a judicial but a political question for determination. But the legislative and executive department of any government by its decision or action binds the judicial." The Penza, The Tobolsk, supra, p. 92.

"It is equally a settled rule of law that the foreign relations of our Government are committed by the Constitution to the executive and legislative departments of our Government, and what is done by such departments is not subject to judicial inquiry or decision. * * * It is for the executive and legislative departments to say in what relations any other country stands toward it. Courts of justice can not make the decision." Lehigh Valley R. Co. v. State of Russia, supra, p. 399.

[fol. 43] "It is also settled law that allegations in a pleading tending to show that a government is sovereign in character are not conclusive on demurrer, but that the court

is bound to take judicial notice of the fact as it exists in reality. To enable it to correctly determine the fact, the courts may have recourse to such sources of information as they deem most trustworthy. Russian Socialist Federated Soviet Republic v. Cibrario, 198 App. Div. 869, 191 N. Y. Supp. 543.

"The Soviet Government of Russia has never been recognized by our Government; hence we may not ascribe any of the attributes of sovereignty to it. It follows that all the acts of that Government in contemplation of American courts are ineffective, without consent of the parties concerned, to create, transfer, or nullify legal obligations. So far as the defendant seeks to deduce such legal consequences from the decrees and activities of the Soviet Government, its defense is insufficient." Sokoloff v. National City Bank, supra, p 358.

"Not only are the courts bound to take judicial notice of public matters, as before stated, which bear upon the question of our recognition of foreign sovereignties, but they have the right, where they are in doubt as to the facts, to call upon the Department of State for the necessary information." Russian Socialist Federated Soviet Government v. Cibrario et al., supra, p. 547.

This court must take judicial notice of the fact that recognition has been denied by the Executive and the State Department to the Union of Soviet Socialist Republics in Russia. The right given an alien to sue the United States in section 155 of the Judicial Code, supra, is a great privilege —one arising out of comity between nations. We must conclude that Congress, when it granted this great privilege to the subjects "of any government" according reciprocal rights to citizens of the United States, had in mind such governments as may be recognized by the proper authorities of the United States under our well-known polity of government.

Until the Union of Soviet Socialist Republics is so recognized this court has no jurisdiction over the case at bar, except to dismiss it. It is therefore ordered and adjudged that plaintiff's petition be, and the same is hereby, dismissed.

Green, Judge; Moss, Judge; Graham, Judge; and Booth, Chief Justice, concur.

IX. Judgment

[fol. 44] At a Court of Claims held in the City of Washington on the 1st day of April, A. D., 1929, judgment was ordered to be entered as follows:

It is adjudged and ordered that the plaintiff, Russian Volunteer Fleet, is not entitled to recover and its petition is therefore dismissed.

X. Proceedings After Entry of Judgment

On August 30, 1929, the plaintiff by leave of court, on motion made therefor, filed a motion for a new triel.

On November 4, 1929, the court entered the following order on said motion:

Order

It is ordered this 4th day of November, 1929, that the plaintiff's motion for new trial be and the same is overruled.

By the Court.

[fol. 45] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,754. Court of Claims. Term No. 623. Russian Volunteer Fleet, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed February 3, 1930. File No. 34,754.

SUPREME COURT OF THE UNITED STATES

STIPULATION AND ADDITION TO RECORD—Filed Mar. 13, 1930.

It is hereby stipulated and agreed by the petitioner, the Russian Volunteer Fleet Corporation, by its counsel and by the United States, the respondent, by its Assistant Attorney General, that the attached certification of proceedings in this cause in the United States Court of Claims be added to the record on file in the Supreme Court of the United States.

Charles Recht, Horace S. Whitman, Wm. S. Marbury, Jr., Counsel for Petitioner. Charles B. Rugg, Assistant Attorney General, for Respondent.

P. M. C.

COURT OF CLAIMS OF THE UNITED STATES

No. A-69

RUSSIAN VOLUNTEER FLEET

vs.

THE UNITED STATES

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that in the above-entitled cause the plaintiff, on May 22, 1929, filed a motion for an extension of time of sixty (60) days within which to file a motion for a new trial. Said motion was allowed by the court May 24, 1929.

I further certify that the plaintiff, on July 24, 1929, filed a motion to extend the time for filing a motion for new trial to September 1, 1929. Said motion was allowed by the court July 29, 1929.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 12th day of March, A. D., 1930.

F. C. Kleinschmidt, Assistant Clerk, Court of Claims.
(Seal Court of Claims.)

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 21, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.